

APPEAL NO. 010698

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 1, 2001. The hearing officer resolved the disputed issues by deciding that the appellant's (claimant) impairment rating (IR) is eight percent as certified by Dr. E, the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appealed and the respondent (carrier) responded.

DECISION

The hearing officer's decision is affirmed.

Section 408.125(e) provides that if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary. The parties stipulated that on _____, the claimant sustained a compensable injury in the form of a fractured left hip and traumatic osteoarthritis, and that the claimant reached maximum medical improvement on March 7, 2000.

The claimant's treating doctor, Dr. M, certified that the claimant has a 20% IR. Dr. E, the designated doctor, examined the claimant and certified that the claimant has an eight percent IR. The claimant testified that Dr. E raised the claimant's leg and twisted it during range of motion (ROM) testing. In response to a Commission inquiry, Dr. E wrote that the claimant's leg was held in a supportive fashion while active ROM was requested, that the supportive technique was used in an attempt to reduce the muscular guarding that is associated with painful ROM, and that there was no active manipulation "to the extreme." The claimant presented no medical evidence to show that Dr. E's ROM testing was done contrary to the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). See Texas Workers' Compensation Commission Appeal No. 000560, decided April 24, 2000. Dr. E wrote that his IR evaluation was done in accordance with the AMA Guides. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer's decision is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust.

The hearing officer's decision and order are affirmed.

Robert W. Potts
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge